

**Rule 14-510. Prosecution and appeals.**

(a) Informal complaint of unprofessional conduct.

(a)(1) Filing. A disciplinary proceeding may be initiated against any member of the Bar by any person, OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain and concise language setting forth the acts or omissions claimed to constitute unprofessional conduct. Upon filing, an informal complaint shall be processed in accordance with this article.

(a)(2) Form of informal complaint. The informal complaint need not be in any particular form or style and may be by letter or other informal writing, although a form may be provided by the OPC to standardize the informal complaint format. It is unnecessary that the informal complaint recite disciplinary rules, ethical canons or a prayer requesting specific disciplinary action. The informal complaint shall be signed by the complainant and shall set forth the complainant's address, and may list the names and addresses of other witnesses. The informal complaint shall be notarized and contain a verification attesting to the accuracy of the information contained in the complaint. In accordance with Rule 14-504(b), complaints filed by OPC are not required to contain a verification. The substance of the informal complaint shall prevail over the form.

(a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel shall conduct a preliminary investigation to ascertain whether the informal complaint is sufficiently clear as to its allegations. If it is not, OPC counsel shall seek additional facts from the complainant; additional facts shall also be submitted in writing and signed by the complainant.

(a)(4) Potential Referral to Professionalism Counseling Board. In connection with any conduct that comes to their attention, whether by means of an informal complaint, a preliminary investigation, or any other means, OPC counsel may, at its discretion, refer any matter to the Professionalism Counseling Board established pursuant to the Supreme Court's Standing Order No. 7. Such referral may be in addition to or in lieu of any further proceedings related to the subject matter of the referral. Such referral should be in writing and, at the discretion of OPC counsel, may include any or all information included in an informal complaint or additional facts submitted by a complainant.

(a)(5) Notice of informal complaint. Upon completion of the preliminary investigation, OPC counsel shall determine whether the informal complaint can be resolved in the public interest, the respondent's interest and the complainant's interest. OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint. If the informal complaint cannot be so resolved or if it sets forth facts which, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, OPC counsel shall cause to be served a NOIC by regular mail upon the respondent at the address reflected in the records of the Bar. The NOIC shall have attached a true copy of the signed informal complaint against the respondent and shall identify with particularity the possible

violation(s) of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by OPC counsel.

(a)(6) Answer to informal complaint. Within 20 days after service of the NOIC on the respondent, the respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation of the facts surrounding the informal complaint, together with all defenses and responses to the claims of possible misconduct. For good cause shown, OPC counsel may extend the time for the filing of an answer by the respondent not to exceed an additional 30 days. Upon the answer having been filed or if the respondent fails to respond, OPC counsel shall refer the case to a screening panel for investigation, consideration and determination or recommendation. OPC counsel shall forward a copy of the answer to the complainant.

(a)(7) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more adequately addressed in another forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC counsel to the Committee chair within 15 days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the matter for hearing by a screening panel. In the event of the chair's recusal, the chair shall appoint the vice chair or one of the screening panel chairs to review and determine the appeal.

(b) Proceedings before Committee and screening panels.

(b)(1) Review and investigation. In their role as fact finders and investigators, A-screening panels shall review all informal complaints referred to them by OPC counsel, including all the facts developed by the informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel. Prior to any hearing OPC may provide the screening panel a summary of its investigation. If provided, the summary shall identify with particularity any additional violations of the Rules of Professional Conduct as subsequently determined by OPC after service of the NOIC. If provided to the screening panel, the summary shall also be provided to the respondent and shall serve as notice of any additional violations not found in the NOIC. If additional rule violations are alleged in the summary, the summary shall be provided to the respondent no less than seven days prior to the hearing. In cases where a judicial officer has not addressed or reported a respondent's alleged misconduct, the screening panel should not consider this inaction to be evidence either that misconduct has occurred or has not occurred.

(b)(2) Respondent's appearance. Before any action is taken that may result in the recommendation of an admonition or public reprimand or the filing of a formal complaint, the screening panel shall, upon at least 30 days' notice, afford the respondent an opportunity to

75 appear before the screening panel. Respondent and any witnesses called by the respondent may  
76 testify, and respondent may present oral argument with respect to the informal complaint.  
77 Respondent may also submit a written brief to the screening panel at least 10 days prior to the  
78 hearing, which shall not exceed 10 pages in length unless permission for enlargement is  
79 extended by the panel chair or vice-chair ~~the chair's delegate~~ for good cause shown. A copy of  
80 the brief shall be forwarded by OPC counsel to the complainant. If OPC identifies additional rule  
81 violations in the summary referenced in (b)(1), the respondent may file an additional written  
82 response addressing those alleged violations prior to the hearing.

83 (b)(3) Complainant's appearance. A complainant shall have the right to appear before the  
84 screening panel personally and, together with any witnesses called by the complainant, may  
85 testify.

86 (b)(4) Right to hear evidence; cross-examination. The complainant and the respondent shall  
87 have the right to be present during the presentation of the evidence unless excluded by the  
88 screening panel chair for good cause shown. Respondent may be represented by counsel, and  
89 complainant may be represented by counsel or some other representative. Either complainant or  
90 respondent may seek responses from the other party at the hearing by posing questions or areas  
91 of inquiry to be asked by the panel chair. Direct cross-examination will ordinarily not be permitted  
92 except, upon request, when the panel chair deems that it would materially assist the panel in its  
93 deliberations.

94 (b)(5) Rule Violations Not Charged by OPC. During the screening panel hearing, but not  
95 after, the panel may find that rule violations not previously charged by OPC in the NOIC or  
96 summary memorandum have occurred. If so, the screening panel shall give the respondent a  
97 reasonable opportunity to respond during the hearing. The respondent may address the  
98 additional charges at the hearing and also provide the panel with a written response to the new  
99 charges along with supplemental materials related to the new charges. Any written response and  
100 supplemental materials shall be submitted to OPC within five business days of the hearing. OPC  
101 shall promptly deliver the response to the panel. Prior to making a determination or  
102 recommendation, the response and any supplemental materials shall be reviewed and  
103 considered by at least a quorum of the panel members present at the original hearing.

104 (b)(5)(6) Hearing Record. The proceedings of any hearing before a screening panel under  
105 this subsection (b) shall be recorded at a level of audio quality that permits an accurate  
106 transcription of the proceedings. Pursuant to its function as secretary to the Committee under  
107 Rule 14-503(h)(1), OPC shall be responsible for the assembly of the complete record of the  
108 proceedings, to be delivered to the chair of the Committee upon the rendering of the panel's  
109 determination or recommendation to the Committee chair. The record of the proceedings before  
110 the panel shall be preserved for not less than one year following delivery of the panel's

determination or recommendation to the chair of the Committee and for such additional period as any further proceedings on the matter are pending or might be instituted under this section.

(b)(6)(7) Screening panel determination or recommendation. Upon review of all the facts developed by the informal complaint, answer, investigation and hearing, the screening panel shall make one of the following determinations or recommendations:

(b)(6)(7)(A) The preponderance of evidence presented does not establish that the respondent was engaged in ~~unprofessional~~ misconduct, in which case the informal complaint shall be dismissed. OPC counsel shall promptly give notice of such dismissal by regular mail to the complainant and the respondent. A letter of caution may also be issued with the dismissal. The letter shall be signed by OPC counsel or the screening panel chair and shall serve as a guide for the future conduct of the respondent. The complainant shall also be confidentially notified of the caution;

(b)(6)(7)(B) The informal complaint shall be referred to the Diversion Committee for diversion. In this case, the specific material terms of the Diversion Contract agreed to by the respondent are to be recorded as a part of the screening panel record, along with any comments by the complainant. The screening panel shall have no further involvement in processing the diversion. The Diversion Committee shall process the diversion in accordance with Rule 14-533.

(b)(6)(7)(C) The informal complaint shall be referred to the Professionalism Counseling Board established pursuant to the Supreme Court's Standing Order No. 7;

(b)(6)(7)(D) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent be admonished;

(b)(6)(7)(E) The informal complaint shall be referred to the Committee chair with an accompanying screening panel recommendation that the respondent receive a public reprimand; or

(b)(6)(7)(F) A formal complaint shall be filed against the respondent if the panel finds there is probable cause to believe there are grounds for public discipline and that a formal complaint is merited. A formal complaint shall also be filed if the panel finds there was misconduct and the misconduct is similar to the misconduct alleged in a formal complaint against the respondent that has been recommended by a screening panel or is pending in district court at the time of the hearing. pursuant to Rule 14-511.

(b)(8) Aggravation and Mitigation. The respondent and OPC may present evidence and argument as to mitigating and aggravating circumstances during the screening panel hearing, but this evidence shall not be considered until after the panel has determined the respondent engaged in misconduct.

(b)(9) Multiple cases involving the same respondent. More than one case involving the same respondent may be scheduled before the same panel. In determining whether a rule has been

147 violated in one case, a screening panel shall not consider the fact it may be hearing multiple  
148 cases against the same respondent.

149 (b)(7)(10) Recommendation of admonition or public reprimand. A screening panel  
150 recommendation that the respondent should be disciplined under subsection (b)(6)(7)(G)(D) or  
151 (b)(6)(7)(D)(E) shall be in writing and shall state the substance and nature of the informal  
152 complaint and defenses and the basis upon which the screening panel has concluded, by a  
153 preponderance of the evidence, that the respondent should be admonished or publicly  
154 reprimanded. A copy of such screening panel recommendation shall be delivered to the  
155 Committee chair and a copy served upon the respondent.

156 ~~(b)(8) Determination of appropriate sanction. In determining an appropriate sanction and only~~  
157 ~~after having found unethical conduct, the screening panel may consider any admonitions or~~  
158 ~~greater discipline imposed upon the respondent within the five years immediately preceding the~~  
159 ~~alleged offense.~~

160 ~~(b)(9) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in~~  
161 ~~abeyance by the Committee prior to the filing of a formal complaint when the allegations or the~~  
162 ~~informal complaint contain matters of substantial similarity to the material allegations of pending~~  
163 ~~criminal or civil litigation in which the respondent is involved.~~

164 (c) Exceptions to screening panel determinations and recommendations. Within 30 days after  
165 the date of the determination of the screening panel of a dismissal, dismissal with letter of  
166 caution, a referral to the Diversion Committee, a referral to the Professionalism Counseling  
167 Board, or the recommendation of an admonition, or the recommendation of a public reprimand,  
168 OPC may file with the Committee chair exceptions to the determination or recommendation and  
169 may request a hearing. The respondent shall then have 30 days within which to make a  
170 response, and the response shall include respondent's exceptions, if any, to a recommendation of  
171 an admonition or reprimand. Within 30 days after service by OPC of the recommendation of an  
172 admonition or public reprimand on respondent, the respondent may file with the Committee chair  
173 exceptions to the recommendation and may request a hearing, and OPC shall have 30 days  
174 within which to file a response. The Committee chair may allow a reply to any response. No  
175 exception may be filed to a screening panel determination that a formal complaint shall be filed  
176 against a respondent pursuant to Rule 14-511. All exceptions shall include a memorandum, not to  
177 exceed 20 pages, stating the grounds for review, the relief requested and the bases in law or in  
178 fact for the exceptions.

179 (d) Procedure on exceptions.

180 (d)(1) Hearing not requested. If no hearing is requested, the Committee chair will review the  
181 record compiled before the screening panel.

182 (d)(2) Hearing requested. If a request for a hearing is made, the Committee chair or a  
183 screening panel chair designated by the Committee chair shall serve as the Exceptions Officer

184 and hear the matter in an expeditious manner, with OPC counsel and the respondent having the  
185 opportunity to be present and give an oral presentation. The complainant need not appear  
186 personally. ~~However, upon motion to the Exceptions Officer and for good cause shown, OPC or~~  
187 ~~respondent may seek to augment the record before the screening panel or the original brief on~~  
188 ~~exceptions, including:~~

189 ~~(d)(2)(A) A request to call complainant as an adverse witness for purposes of cross-~~  
190 ~~examination if complainant was not subject to direct cross-examination before the screening~~  
191 ~~panel, and~~

192 (d)(2)(B)(3) Transcript Request. Upon request the Committee chair shall extend the deadlines  
193 for filing exceptions or responses in order to allow a party ~~A request for time to obtain a transcript~~  
194 ~~of the screening panel proceedings, to support respondent's exceptions, t~~The cost of such  
195 transcript ~~to shall~~ be borne by the requesting party, requesting it. If a transcript is requested, OPC  
196 will also provide the Committee chair with a copy of the transcript as transcribed by a court  
197 reporting service, together with an affidavit establishing the chain of custody of the record.

198 ~~(d)(3)(4) Burden of proof. The party who files exceptions under subsection (c) shall have the~~  
199 ~~burden of showing that the determination or recommendation of the screening panel is~~  
200 ~~unsupported by substantial evidence or is arbitrary, capricious, legally insufficient or otherwise~~  
201 ~~clearly erroneous.~~

202 ~~(d)(4) Response. The party opposing the exception may file a written response within the time~~  
203 ~~allowed by the Exceptions Officer.~~

204 (d)(5) Record on exceptions. The proceedings of any hearing on exceptions under this  
205 subsection (d) shall be recorded at a level of audio quality that permits an accurate transcription  
206 of the proceedings.

207 (e) Final Committee disposition. Either upon the completion of the exceptions procedure  
208 under subsection (d) or if no exceptions have been filed under subsection (c), the Committee  
209 chair shall issue a final, written determination that either sustains, dismisses, or modifies the  
210 determination or recommendation of the screening panel. No final written determination is needed  
211 by the Committee chair to a screening panel determination to a dismissal, a dismissal with a letter  
212 of caution, or a referral to the Diversion Committee if no exception is filed.

213 (f) Appeal of a final Committee determination.

214 (f)(1) Within 30 days after the date of a final, written determination of the Committee chair  
215 under subsection (e)(e), OPC may file a request for review by the Supreme Court seeking  
216 reversal or modification of the final determination of the Committee. Within 30 days after service  
217 by OPC of a final, written determination of the Committee chair under subsection (e)(e), the  
218 respondent may file a request for review with the Supreme Court seeking reversal or modification  
219 of the final determination by the Committee. A request for review under this subsection shall only  
220 be available in cases where exceptions have been filed under subsection (c). Dissemination of

disciplinary information pursuant to Rules 14-504(b)(13) or 14-516 shall be automatically stayed during the period within which a request for review may be filed under this subsection. If a timely request for review is filed, the stay shall remain in place pending resolution by the Supreme Court unless the Court otherwise orders.

(f)(2) A request for review under this subsection (f) will be subject to the procedures set forth in Title III of the Utah Rules of Appellate Procedure. Documents submitted under this Rule shall conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure.

(f)(3) A party requesting a transcription of the record below shall bear the costs. OPC will provide the Court with the transcript as transcribed by a court reporting service, together with an affidavit establishing the chain of custody of the record.

(f)(4) The Supreme Court shall conduct a review of the matter on the record.

(f)(5) The party requesting review shall have the burden of demonstrating that the Committee action was:

(f)(5)(A) Based on a determination of fact that is not supported by substantial evidence when viewed in light of the whole record before the Court;

(f)(5)(B) An abuse of discretion;

(f)(5)(C) Arbitrary or capricious; or

(f)(5)(D) Contrary to Articles 5 and 6 of Chapter 14 of the Rules of Professional Practice of the Supreme Court.

(g) General procedures.

(g)(1) Testimony. All testimony given before a screening panel or the Exceptions Officer shall be under oath.

(g)(2) Service. To the extent applicable, service or filing of documents under this Rule is to be made in accordance with Utah Rules of Civil Procedure 5(b)(1), 5(d) and 6(a).

~~(g)(3) Form of Documents. Documents submitted under this Rule shall conform to the requirements of Rules 27(a) and 27(b) of the Utah Rules of Appellate Procedure, except it is not required to bind documents along the left margin.~~

(b)(g)(9)(3) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in abeyance by the Committee chair prior to the filing of a formal complaint when the allegations or the informal complaint contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in which the respondent is involved.